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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to
Revoke Probation Against:

CECILIO G. LITUCO
632 East 78th Street
Los Angeles, California 90001

Respiratory Care Practitioner License No. 21925

Respondent.

Case No. R-1986

**FIRST AMENDED ACCUSATION
AND PETITION TO REVOKE
PROBATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this First Amended Accusation and
Petition to Revoke Probation solely in her official capacity as the Executive Officer of the
Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 11, 2001, the Respiratory Care Board issued Respiratory
Care Practitioner License No. 21925 to Cecilio G. Lituco (Respondent). This license was in effect
at all times relevant to the charges brought herein, and will expire on February 28, 2007, unless
renewed.

3. In a disciplinary action entitled "In the Matter of the Accusation Against
Cecilio G. Lituco," Case No. R-1924, the Board issued a decision effective December 20, 2004,
in which respondent's license was revoked. However, the revocation was stayed and respondent's

1 license was placed on probation for three (3) years with certain terms and conditions. A copy of
2 that decision is attached as Exhibit A and is incorporated herein by reference.

3 JURISDICTION

4 4. This First Amended Accusation and Petition to Revoke Probation is
5 brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the
6 authority of the following laws. All section references are to the Business and Professions Code
7 unless otherwise indicated.

8 5. Section 3710 of the Code states: "The Respiratory Care Board of
9 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
10 the Respiratory Care Practice Act]."

11 6. Section 3718 of the Code states: "The board shall issue, deny, suspend,
12 and revoke licenses to practice respiratory care as provided in this chapter."

13 7. Section 3754 of the Code states: "The board may deny an application for,
14 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon,
15 a license in any decision made after a hearing, as provided in Section 3753."

16 8. Section 3750 of the Code states:

17 "The board may order the suspension or revocation of, or the imposition of
18 probationary conditions upon, a license issued under this chapter, for any of the following
19 causes:

20 " . . .

21 "(g) Conviction of a violation of any of the provisions of this chapter or of any
22 provision of Division 2 (commencing with Section 500), or violating, or attempting to
23 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
24 violate any provision or term of this chapter or of any provision of Division 2 (commencing
25 with Section 500). . . ."

26 9. Section 3750.5 of the Code states:

27 "In addition to any other grounds specified in this chapter, the board may deny,
28 suspend, or revoke the license of any applicant or license holder who has done any of the

1 following:

2 “(a) Obtained or possessed in violation of law, or except as directed by a licensed
3 physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished
4 or administered to another, any controlled substances as defined in Division 10
5 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug
6 as defined in Article 2 (commencing with section 4015) of Chapter 9.

7 “(b) Used any controlled substance as defined in Division 10 (commencing with
8 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article
9 2 (commencing with section 4015) of Chapter 9. . . .”

10 COST RECOVERY

11 10. Section 3753.5, subdivision (a) of the Code states:

12 “In any order issued in resolution of a disciplinary proceeding before the board, the
13 board or the administrative law judge may direct any practitioner or applicant found to have
14 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
15 investigation and prosecution of the case.”

16 11. Section 3753.7 of the Code states:

17 “For purposes of the Respiratory Care Practice Act, costs of prosecution shall
18 include attorney general or other prosecuting attorney fees, expert witness fees, and other
19 administrative, filing, and service fees.”

20 12. Section 3753.1, subdivision (a) of the Code states:

21 “An administrative disciplinary decision imposing terms of probation may include,
22 among other things, a requirement that the licensee-probationer pay the monetary costs associated
23 with monitoring the probation.”

24 FIRST CAUSE TO REVOKE PROBATION

25 (Biological Fluid Testing)

26 13. At all times after the effective date of Respondent’s probation, Condition 2
27 stated:

28 Respondent, at his expense, shall participate in random testing, including, but not

1 limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle
2 testing, or a drug screening program approved by the Board. Test costs range from \$21.00
3 to \$200.00 each. The length of time shall be for the entire probation period. The
4 frequency and location of testing will be determined by the Board.

5 At all times, Respondent shall fully cooperate with the Board or any of its
6 representatives, and shall, when directed, submit to such tests and samples for the detection
7 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances.

8 If Respondent is unable to provide a specimen in a reasonable amount of time from
9 the request, while at the work site, Respondent understands that any Board representative
10 may request from the supervisor, manager or director on duty to observe Respondent in a
11 manner that does not interrupt or jeopardize patient care in any manner until such time
12 Respondent provides a specimen acceptable to the Board.

13 Failure to submit to testing or appear as requested by any Board representative for
14 testing, as directed shall constitute a violation of probation and shall result in the filing of an
15 accusation and/or a petition to revoke probation against Respondent's respiratory care
16 practitioner license.

17 14. Respondent's probation is subject to revocation because he failed to
18 comply with Probation Condition 2, referenced above. The facts and circumstances regarding this
19 violation are as follows:

20 15. As part of respondent's random drug testing program, he was required to
21 telephone Compass Vision, Inc. (CVI) on a daily basis to determine if he needed to provide a
22 specimen for testing and analysis. Respondent failed to telephone CVI on the following dates:
23 February 12 through 14, 20, 24, March 9, April 1, 7 through 9, 23, 26 through 30, and May 1,
24 2005 through March 2, 2006. He was scheduled for testing and failed to appear for testing on
25 February 28, April 1, 6, 25, May 2, June 10, September 9, November 17, and December 27,
26 2005; and January 5, and February 17, 2006.

27 SECOND CAUSE TO REVOKE PROBATION

28 (Abstain from Use of Any and All Mood Altering Substances)

1 16. At all times after the effective date of Respondent's probation, Condition 3
2 stated:

3 Respondent shall completely abstain from the possession or use of alcohol, any and
4 all other mood altering drugs, substances and their associated paraphernalia, except when
5 the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical
6 treatment.

7 Respondent shall execute a release authorizing the release of pharmacy and
8 prescribing records as well as physical and mental health records. Respondent shall also
9 provide information of treating physicians, counselors or any other treating professionals as
10 requested by the Board.

11 Respondent shall ensure that he is not in the presence of or in the same physical
12 location as individuals who are using illegal substances, even if Respondent is not
13 personally ingesting the drug(s).

14 Any positive result that registers over the established laboratory cutoff level shall
15 constitute a violation of probation and shall result in the filing of an accusation and/or a
16 petition to revoke probation against Respondent's respiratory care practitioner license.

17 Respondent also understands and agrees that any positive result that registers over
18 the established laboratory cutoff level shall be reported to each of Respondent's employers.

19 17. Respondent's probation is subject to revocation because he failed to
20 comply with Probation Condition 3, referenced above. The facts and circumstances regarding this
21 violation are as follows:

22 18. On March 11, 2005, respondent appeared at a collection site to provide a
23 urine specimen for testing and analysis in accordance with his probation monitoring program. On
24 March 29, 2005, the Board received a laboratory report from CVI which indicated respondent
25 tested positive for amphetamines at 620 nanograms/milligrams and for methamphetamines at
26 greater than 5000 nanograms/milligrams. On May 15, 2005, this specimen came back positive for
27 DEA Schedule II CNS stimulant (d-methamphetamine) or "street" drug. Respondent's work
28 schedule indicates he worked as a respiratory care practitioner at Little Company of Mary

1 Subacute Care Center on March 10, 11, and 12, 2005.

2 19. On April 8, 2005, respondent appeared at a collection site to provide a
3 urine specimen for testing and analysis. On April 20, 2005, the Board received a laboratory report
4 from CVI which indicated respondent tested positive for amphetamines at 1600
5 nanograms/milligrams and for methamphetamines at 4800 nanograms/milligrams. On May 23,
6 2005, this specimen came back positive for DEA Schedule II CNS stimulant (d-
7 methamphetamine) or "street" drug.

8 20. On April 20, 2005, respondent signed his Drug Questionnaire under
9 penalty of perjury. He indicated on this form that he drank Corona beer in February and March
10 2005.

11 THIRD CAUSE TO REVOKE PROBATION

12 (Obey All Laws)

13 21. At all times after the effective date of Respondent's probation, Condition 5
14 stated:

15 Respondent shall obey all laws, whether federal, state, or local. Respondent shall
16 also obey all regulations governing the practice of respiratory care in California.

17 Respondent shall notify the Board in writing within 14 days of any incident
18 resulting in his arrest, or charges filed against, or a citation issued against Respondent.

19 22. Respondent's probation is subject to revocation because he failed to comply
20 with Probation Condition 5, referenced above. The facts and circumstances regarding this
21 violation are as follows:

22 23. Respondent violated sections 3750, subdivision (g), and 3750.5,
23 subdivisions (a) and (b) of the Code in that he administered to himself and used the controlled
24 substances amphetamines and methamphetamines. The facts and circumstances, set forth in
25 Paragraph 18 through 20 of this First Amended Accusation and Petition to Revoke Probation, are
26 incorporated herein by reference.

27 FOURTH CAUSE TO REVOKE PROBATION

(Quarterly Reports)

24. At all times after the effective date of Respondent's probation, Condition 6 stated:

"Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

"Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

"For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th. For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th. For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

"Failure to submit complete and timely reports shall constitute a violation of probation."

25. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 6 referenced above. The facts and circumstances regarding this violation are as follows:

26. Respondent was required to file quarterly reports to the Board appointed probation monitor. Respondent failed to file with his probation monitor the quarterly reports for the periods of July 1, 2005 through September 30, 2005 and October 1, 2005 through December 31, 2005.

FIFTH CAUSE TO REVOKE PROBATION

(Probation Monitoring Program)

27. At all times after the effective date of Respondent's probation, Condition 7 stated:

"Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed."

"Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

"Respondent is encouraged to contact the Board's Probation Program at any time he has a question or concern regarding his terms and conditions of probation.

"Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license."

28. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 7, referenced above. The facts and circumstances, set forth in Paragraphs 14 through 26 of this First Amended Accusation and Petition to Revoke Probation, are incorporated herein by reference.

FIRST CAUSE FOR DISCIPLINE

(Obtained or Possessed or Administered a Controlled Substance)

29. Respondent is subject to disciplinary action under sections 3750, subdivision (g) and 3750.5, subdivision (a) of the Code, in that he obtained or possessed or administered to himself the controlled substances amphetamines and methamphetamines. The facts and circumstances, set forth in Paragraphs 18 through 20 of this First Amended Accusation and Petition to Revoke Probation, are incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Use of a Controlled Substance)

30. Respondent is subject to disciplinary action under sections 3750, subdivision (g) and 3750.5, subdivision (b) of the Code, in that he used the controlled substances amphetamines and methamphetamines. The facts and circumstances, set forth in Paragraphs 18 through 20 of this First Amended Accusation and Petition to Revoke Probation, are incorporated herein by reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking the probation that was granted by the Respiratory Care Board of California in Case No. R-1924;

2. Revoking or suspending Respiratory Care Practitioner License No. 21925 issued to Cecilio G. Lituco;

3. Ordering Cecilio G. Lituco to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if probation is continued or extended, the costs of probation monitoring;

4. Taking such other and further action as deemed necessary and proper.

DATED: April 6, 2006

Original signed by Liane Zimmerman for: _____
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant